BANKRUPTCY—SPENDTHRIFT TRUST AS ASSET OF TRUSTEE.—§ 98 of the REAL PROPERTY LAW of New York provides that the surplus income of spendthrift trusts, beyond the sum necessary for the education and support of the beneficiary, shall be liable to the claims of his creditors in the same manner as other personal property which cannot be reached by execution. § 47a (2) (amendment of 1910) of the BANKRUPTCY ACT provides that the trustee in bankruptcy "as to all property not in the custody of the bankruptcy court shall be deemed vested with all the rights, remedies, and powers of a judgment creditor holding an execution duly returned unsatisfied." *Held,* that the trustee in bankruptcy of the beneficiary was entitled to the surplus income of a spendthrift trust. *Jenks* v. *Title Guarantee Co.,* 170 App. Div. (N. Y.) 830, 156 N. Y. Supp. 478.

The trustee cannot claim this surplus under § 70a (5) as "property which prior to the filing of the petition he [the bankrupt] could by any means have transferred or which might have been levied upon and sold under judicial process against him," *Butler* v. *Baudowne,* 84 App. Div. 215, 179 N. Y. 530, but a judgment creditor with execution returned unsatisfied can reach this asset in equity, under § 98 of the REAL PROPERTY LAW, *Dittmar* v. *Gould,* 60 App. Div. 94, and, through holding no specific lien, is thus preferred over general creditors. But since the 1910 amendment of § 47a (2), the trustee is vested with the "rights, remedies and powers of a creditor holding an execution duly returned unsatisfied" and, as in the instant case, can reach this surplus. In Massachusetts, as in New York and the majority of states, it is permissible to settle the entire income on the beneficiary in such manner that it cannot be alienated by him or taken by his creditors in advance of payment to him, *Broadway Bank* v. *Adams,* 133 Mass. 170, 23 Am. Rep. 504. Since in such states there is no statute corresponding to § 98 of the REAL PROPERTY LAW of New York, the trustee cannot recover any of the income under § 47a (2), while the terms of the trust itself, preventing it from being alienated by the bankrupt or reached by judicial process against him, make recovery impossible by the trustee in bankruptcy under § 70a (5). *Eaton* v. *Boston Safe Deposit & Trust Co.,* 240 U. S. 427, 36 Sup. Ct. 391. In the *Eaton* case, even though the interest could be transferred by the bankrupt and would seem to pass to the trustee in bankruptcy as coming within the exact terms of § 70a (5), Justice HOLMES "holds the restricting clause paramount" and says that "the power of alienation will not be pressed to a point inconsistent with the dominant intent of the will." The fact that the creation of the trust and the death of the testator both occurred before the passage of the bankruptcy act tend to make justifiable the court's refusal to apply broadly § 70a (5). In those states which are committed to the English rule that a debtor cannot retain any beneficial interest beyond the reach of a creditor's bill, *Brandon* v. *Robinson,* 18 Ves. Jr. 429; *Tillinghast* v. *Bradford,* 5 R. I. 205, such a trust is not often created and this question can seldom arise. If created the trust would undoubtedly pass to the trustee in bankruptcy, under § 47a (2).